

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 4684 OF 1996.

The Principal,
ILS Law College, Pune..... Petitioners.
V/s
Subhash K. Waghmare & Anr... ..
Respondents.

Mr.P.S.Dani, Adv. For the petitioners.

Mr.Nitin Kulkarni, Adv. For respondent No.1.

CORAM: A.P.DESHPANDE,

J.

20.2.2007.

Oral Judgment:

The Principal ILS Law College, Pune has filed this petition questioning the legality and validity of the order passed by Presiding Officer of the University and College Tribunal, Pune on an application filed by respondent under section 63 of the Maharashtra Universities Act, 1994.

2. The respondent No.1 was at the relevant time working as Peon in the petitioner's college. Respondent was proceeded against by initiating departmental inquiry on certain charges of misconduct. The charges were inquired into after affording adequate opportunity of

being heard in the matter. In the inquiry misconduct was established which resulted respondent No.1's dismissal from service. Aggrieved by dismissal respondent No.1 preferred an appeal before the Tribunal. The Tribunal partly allowed the appeal. However it did not concur with the punishment of dismissal awarded and hence substituted the punishment by directing withholding of two future increments with permanent effect. In para 19 of the judgment the Tribunal has categorically held that the charge of negligence in duty leveled against respondent No.1 is established and proved. It further holds that charge that the appellant was guilty of misconduct in allowing a stranger woman in the campus of the college on the night of 17/18th August, 1998 and then on being asked to go out did not go out but on the contrary when his wife arrived, quarrel took place between him and his wife and he slapped her. Having held that the above referred two acts of misconduct are established involving moral turpitude respondent No.1 is let off by imposing lighter punishment. What is relevant to notice that though the Tribunal has held that the misconduct is proved but it has only reduced the punishment. However the Tribunal did not direct payment of back wages from the date of termination till reinstatement. The order passed by the Tribunal dated 28.4.1995 has assumed finality as the petition preferred by the present petitioner has been dismissed and Special Leave

Petition also met with the same fate. Though the Tribunal did not grant back wages an application purported to be under section 63 of the Act came to be filed by respondent before the Tribunal making a grievance that the present petitioner has not complied with directions issued by the Tribunal and hence be punished. In reply filed to the application under section, 63 the Principal of the Law College has contended that no such direction was ever issued by the Tribunal in regard to payment of back wages and hence there is no question of non compliance of the order passed by the Tribunal. Rejecting the submission the Tribunal has allowed the application moved by the respondent and has passed the impugned order which goes to direct the petitioner to pay back wages from the date of termination till date of reinstatement, failing which the Tribunal cautioned the petitioner that further orders would be passed under section 63. It is at this stage that the petitioner approached this Court questioning correctness of the impugned order and this Court being prima facie satisfied that the petitioner is not guilty of non compliance of the order passed by the Tribunal has granted interim relief which continues to operate till today. In these factual situation the learned counsel Shri Dani appearing for the petitioner has made two fold submission; one that the Tribunal has not passed any order u/s.61 directing the payment of back wages and hence no action u/s.63 can be taken by

the Tribunal and secondly that the Tribunal has been invested with ample discretion as is apparent from sub section 2 of section 61 to mould the relief and grant such relief which advances cause of justice. In the submission of the learned counsel section 61(2)(c) empowers the Tribunal to issue direction to award arrears to the employee for such period as it may specify. It is thus clear that the Tribunal has jurisdiction to either grant or refuse claim of back wages or allow claim for such period as it may specify. If this be the position, the Tribunal no doubt has to pass an order either granting or refusing back wages. The impugned order proceeds on an assumption that back wages must follow an order of reinstatement. Proceeding on these lines the Tribunal has held that a direction in regard to payment of back wages is implicit in the order passed by the Tribunal granting reinstatement. The learned counsel for the petitioner submits that the said assumption 'that back wages follow reinstatement' is an incorrect assumption of the Tribunal and to substantiate the said submission learned counsel places reliance on a judgment in the case of **A.P.SRTC & Anr. v. B.S.David Paul** , (2006) 2 SCC 282. In the said judgment the Supreme Court has held that entitlement of back wages is not automatic on reinstatement. Rejecting the contention of the employee the Supreme Court observed that the relief must be deemed to have been denied, for what is claimed but not granted in judicial or

quasi-judicial proceedings would be deemed to have been denied. In the result, I have no doubt in my mind that the Tribunal while allowing the appeal had not granted back wages to respondent No.1 and hence an application moved by him purportedly under section 63 of the Universities Act, seeking punishment of the present petitioner was itself misconceived and consequently the impugned order dated 21.8.1996 passed by the Tribunal is unsustainable in law requiring its quashing. In the result, therefore, writ petition is allowed. Impugned order purported to have been passed by the Tribunal under section 63 of the Universities Act, dated 21.8.1996 is quashed and set aside. Rule is made absolute in above terms with no order as to costs.